

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

VICTOR L. MCMURRY,)	
)	
Plaintiff,)	7:07CV5002
)	
v.)	
)	
SANDERS-MCMURRY ENTERPRISES,)	MEMORANDUM OPINION
a Nebraska Limited Liability)	
Company,)	
)	
Defendant.)	
_____)	

This matter is before the Court on defendant, Sanders-McMurry Enterprises, LLC's motion to dismiss plaintiff's complaint (Filing No. 7). The Court finds defendant's motion to dismiss should be granted under Fed. R. Civ. P. 12(b)(1).

"Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action." Fed. R. Civ. P. 12(h)(3). Plaintiff's sole basis for asserting that this Court possesses subject matter jurisdiction is diversity of citizenship. Congress limits a federal district court's diversity jurisdiction to "all civil actions where the matter in controversy exceeds . . . \$75,000 . . . and is between . . . citizens of different States." 28 U.S.C. § 1332(a)(1). For diversity jurisdiction purposes, an LLC's citizenship is that of its members. *GMAC Commer. Credit LLC v. Dillard Dep't Stores, Inc.*, 357 F.3d 827, 828 (8th Cir. 2004). Thus, in determining if

this Court possesses subject matter jurisdiction, it is necessary to determine if the parties to this action are diverse.

According to the complaint, the plaintiff, Victor L. McMurry ("McMurry") is a resident of Wyoming and is an equity owner (or member) of the defendant, Sanders-McMurry Enterprises ("SME"), a Nebraska limited liability company. Complaint, ¶¶ 1, 3. SME's citizenship is necessarily the same as Victor's because he is a member of SME. Therefore, federal diversity jurisdiction is lacking because, under the law of the Eighth Circuit, SME is considered to be a citizen of every state in which its members are citizens.

Without diversity jurisdiction, this Court lacks subject matter jurisdiction and the complaint will be dismissed. A separate order will be entered in accordance with this memorandum opinion.

DATED this 23rd day of April, 2007.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court